UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KIMBER BALDWIN DESIGNS, LLC individually and on behalf of all others similarly situated,	:	**CASE NO: 1:16-CV-00448**
	:	**JUDGE: Timothy Black**
Plaintiff,	:	
vs.	:	**FIRST AMENDED CLASS ACTION COMPLAINT**
SILV COMMUNICATIONS, INC.	:	
Defendant.	:	

This First Amended Class Action Complaint is filed as a matter of right pursuant to Fed. R. Civ. P. 15(a)(1)(B). All allegations made in this First Amended Class Action Complaint are based upon information and belief except those allegations that pertain to Plaintiff, which are based on personal knowledge. Each allegation in this First Amended Class Action Complaint either has evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the *Federal Rules of Civil Procedure*, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Plaintiff, individually and on behalf of all others similarly situated, for its First Amended Complaint against Defendant states as follows:

I. PRELIMINARY STATEMENT

1. In or around Summer 2014, Defendant Silv Communications, Inc. ("Silv" or "Defendant") called Plaintiff Kimber Baldwin Designs, LLC ("Plaintiff") purporting to verify Plaintiff's business name, business address, and telephone number for inclusion in a directory. During the call, Silv asked Plaintiff several questions calling for the affirmative response, "Yes." Thereafter, Silv caused Plaintiff's long distance provider to be changed to Silv by falsely representing that Plaintiff had consented to the change in violation of 47 U.S.C. §§ 201(b) and 258(b) of the federal Wire or Radio Communications Act, 47 U.S.C. § 201, *et seq.* (the "Communications Act") and Title 47 of the Code of Federal Regulations. This unlawful practice is known as "slamming."

2. When Plaintiff discovered that it had been slammed and challenged Silv to provide verification of Plaintiff's alleged consent to the switch, Silv played an audio recording ostensibly containing Plaintiff's affirmative responses ("Yes") to a series of questions seeking permission to switch telephone providers. The tone and inflection of each "yes" was identical and robotic, as if a recording of the same response was being repeated over and over again. Defendant had fabricated the recording by inserting snippets from the previous call, fraudulently representing questions necessary for inclusion in a directory, in order to falsely suggest that Plaintiff had agreed to switch service providers.

3. Upon information and belief, this is a standard business practice of Silv. Indeed, Silv has been charged with similar violations in the past and been subjected to Federal Communications Commission ("FCC") enforcement proceedings resulting in payment of at least $1,000,000 and submission to a consent decree. *See* Exhibit 1.

4. Publicly available documents indicate that Silv has continuously engaged in a massive fraud on telephone customers by systematically placing calls to individuals and businesses pretending to confirm directory information in order to obtain identification information and verbal recordings sufficient to produce phony "consents." Silv then notifies telephone service providers that consent has been given to switch long distance service to Silv, despite no valid, lawful consent having been given.

5. Because the rates Silv charges for long distance service *far* exceed the market price for equivalent services - services which often include unlimited long distance at no additional charge - no reasonable customer would ever consent to switch to Silv. In other words, Silv provides no service of *any value* to any of the "customers" that it "switched" to its phony long distance service.

6. Upon information and belief, Silv's entire business model is based on fraudulent switching of long distance telephone services in order to charge unsuspecting customers exorbitant fees, gambling on the fact that many customers will not notice the change for months, and that many of those that do will relent in the face of Silv's steadfast refusal to offer refunds.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 47 U.S.C. § 258, and 47 U.S.C. § 207.

8. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

9. Venue within this District is proper because the actions complained of herein occurred within the District, Plaintiff resides here, and Defendant Silv transacts business here.

III. PARTIES

10. Plaintiff Kimber Baldwin Designs, LLC, is an Ohio limited liability company that does business under the registered trade name "Fiber Optic Yarns." Plaintiff is a small business that sells yarn and knitting equipment and related materials and services. The business is managed and operated by Ms. Kimber Baldwin. Plaintiff's principal place of business is in Milford, Ohio, within this judicial district.

11. Defendant Silv Communications, Inc. is a California corporation based in Los Angeles, California and registered to do business in the State of Ohio. Upon information and belief, Silv purports to be a provider of long distance telephone service to individuals and small businesses.

IV. STATEMENT OF FACTS

A. "Slamming" Violates Established Law, And There Is A Private Right of Action For Such Violations.

12. Recognizing the significant danger posed to consumers by "slamming," the FCC has promulgated a comprehensive set of regulations establishing procedures that must be followed to properly switch a consumer's long distance telephone service providers. *See generally* 47 CFR § 64.1100, *et seq*.

13. 47 CFR § 64.1120(c) prohibits telecommunications carriers from submitting a preferred carrier change order unless the order is confirmed by a (1) written or electrically signed authorization form, (2) recorded oral authorization, or (3) verification by an independent third party.

14. A telecommunications carrier that switches a subscriber's long distance telephone service without permission is liable "in an amount equal to all charges paid by such subscriber

after such violation…." 47 U.S.C. § 258(b). *See also* Valdes v. Qwest Commc'ns Int'l, Inc., 147 F. Supp. 2d 116, 123 (D. Conn. 2001).

B. Silv Slams Plaintiff and Repeatedly Refuses to Remove the Charges

15. In or about May 2014, Plaintiff contracted with Cincinnati Bell to establish telephone service at its store.

16. Plaintiff agreed to pay a flat monthly fee of approximately $126.33, including fees and taxes, for two business telephone lines to the store, which included unlimited long distance calls for Plaintiff.

17. In or around August 2014, Silv initiated an inbound telephone call to Plaintiff. The call was answered by an employee of Plaintiff, Corrine Edinger. The caller falsely indicated that the purpose of the call was to confirm details regarding the business for inclusion in an unspecified "directory."

18. The caller asked Ms. Edinger to confirm the name, address, and telephone number of the business, which she did.

19. The caller then repeated back the business details and asked Ms. Edinger to confirm the accuracy of the information. Ms. Edinger replied, "Yes" to each question.

20. The caller then asked Ms. Edinger to provide personal information, including her date of birth and Social Security number. Although Ms. Edinger provided her date of birth, she declined to disclose her Social Security number and ended the telephone call.

21. Ms. Edinger deemed the phone call sufficiently troubling to notify Ms. Baldwin of what had transpired when Ms. Baldwin returned to the store later that day.

22. The caller misrepresented the purpose of the call by falsely indicating that it was to confirm business details for a directory. The true purpose of the call was to obtain information

that Silv could use to switch Plaintiff's long distance provider and obtain an audio recording that could be manipulated to falsely represent that Plaintiff had consented to switch her long distance provider.

23. At no time during the call did the caller inform Plaintiff that the purpose of the call was to obtain consent to switch Plaintiff's long distance telephone service provider, and at no time during the call did Plaintiff consent to any such switch.

24. Plaintiff received a telephone bill from Cincinnati Bell dated October 8, 2014. (*Exhibit 2*).

25. The October 8, 2014 invoice contained unauthorized charges from Silv in the total amount of $40.94. (*Exhibit 2, page 4)*

26. Plaintiff did not notice the new charges and paid the October 8, 2014 invoice, including Silv's charges, via check dated October 27, 2014.

27. Plaintiff received another telephone bill from Cincinnati Bell dated November 8, 2014. The November 8, 2014 invoice also contained unauthorized charges from Silv in the amount of $40.94. (*Exhibit 3, Page 4)*

28. For the first time noticing the new charges, Ms. Baldwin called a phone number on the bill, 1-888-475-8724, on or about November 18, 2014, and requested that the long distances charges be removed.

29. The representative of Silv told Plaintiff that it would remove the fraudulent charges from its bill and that no further charges would be added. The Silv representative gave Ms. Bladwin the confirmation number C4788604.

30. In reliance on Silv's representation that the fraudulent charges would be removed from its bills, Plaintiff paid the full amount of the November 8, 2014 invoice and took no further immediate action to change carriers.

31. Silv did not offer to credit Plaintiff for the amount it previously overpaid.

32. Plaintiff paid, and continued to pay, the full amounts of the telephone bills fearing non-payment or partial payment would result in the disconnection of telephone services.

33. Plaintiff received its next telephone bill from Cincinnati Bell dated December 8, 2014. (*Exhibit 4)*

34. The December 8, 2014 invoice again contained charges from Silv in the amount of $40.94, despite its previous representation on or about November 18, 2014 that Silv would no longer include the fraudulent charges going forward.

35. Frustrated by the continuing improper charges, Ms. Baldwin called Cincinnati Bell for assistance with removing the fraudulent charges.

36. A representative of Cincinnati Bell told Ms. Baldwin that it could take up to sixty days to remove the improper charges from Plaintiff's account.

37. By check dated December 17, 2014, Plaintiff paid the full amount of the December 8, 2014 invoice, including Silv's fraudulent charges.

38. Despite Silv's fraudulent representation made in November 2014 that it would remove all charges and discontinue its so called service to Plaintiff's account, Plaintiff received an invoice from Cincinnati Bell dated January 8, 2015 that again contained charges from Silv in the amount of $40.94. (*Exhibit 5)*

39. Charges from Sliv in the amount of $40.94 again appeared on Plaintiff's February 8, 2015 invoice. (*Exhibit 6)*

40. In February 2015, Ms. Baldwin called Cincinnati Bell a second time for help removing the fraudulent charges.

41. Cincinnati Bell told Ms. Baldwin that the only relief it could offer was to place a "block" on Plaintiff's telephone lines. On information and belief, an effective "block" was never placed on the line to prevent further fraudulent charges by Silv.

42. Plaintiff next called Silv on or about February 19, 2015 to again attempt to have the fraudulent charges removed.

43. During the February 19, 2015 telephone call, Plaintiff informed Silv that it had "Slammed" Plaintiff in violation of federal law, that she had previously demanded the removal of all charges from her bill on numerous occasions, and that Silv must immediately return her service to Cincinnati Bell. In response, the Silv representative stated that Silv had obtained proper consent to switch Plaintiff's long distance telephone service and played a recording of what it alleged was a conversation between Silv and Ms. Edinger.

44. Instead of playing the actual conversation - which mostly consisted of Silv representatives requesting verification of mundane and publicly-available identification information about the business for purposes of updating an unspecified "directory" - Silv played an audio file featuring a male voice reading a series of long, scripted questions at very high rate of speed, which rendered the questions largely unintelligible. Most of the questions called for a yes or no answer, after which the voice of Ms. Edinger would abruptly interject, "Yes," in a stilted, unnatural, and robotic fashion.

45. Even a casual listener can immediately recognize that the recording contained not a series of affirmative responses, but rather replays of the same recorded "Yes" over and over again.

46. Each “Yes” response given was identical in volume, tone and inflection.

47. The recording contains additional evidence of its fabrication. For instance, among the rapid-fire string of questions is the particularly awkward request that Ms. Edinger recite her “Date of Birth or Mother’s Maiden Name.” Without hesitation to consider the compound nature of the question, Ms. Edinger abruptly states her date of birth.

48. Furthermore, the recording features a brief, but unnaturally identical “hard pause” between the end of each question and following response, but almost no pause between the answer and the beginning of the following question.

49. The conversation defies the natural flow of communication between two people, especially in the context of making an important business decision such as the switch of long distance telephone service.

50. Despite Plaintiff’s request for termination of service during the February 19, 2015 call, which was documented in Silv’s customer management system with an entry on February 20, 2015, Silv continued to charge Plaintiff.

51. Plaintiff’s next phone bill received from Cincinnati Bell dated March 8, 2015 again contained charges of $40.94 from Silv. (*Exhibit 7)*

52. In March 2015, Plaintiff paid, via electronic funds transfer, the February and March 2015 invoices from Cincinnati Bell, both of which contained charges from Silv.

53. Plaintiff again paid the full amount of the invoices fearing that partial payment would result in a disconnection of telephone service.

54. It was not until the April 8, 2015 invoice from Cincinnati Bell to Plaintiff that the Silv charges disappeared.

55. At no time did Silv reimburse or offer to reimburse Plaintiff for fraudulent overcharges.

C. Silv Engages In A Pattern And Practice Of Unlawful Activity

56. Silv's conduct relative to Plaintiff is by no means an isolated incident or a singular mistake by Silv. Instead, it is part of a widespread pattern and practice of defrauding people and businesses into switching their long distance telephone service.

57. A review of publicly available records indicates a large volume of complaints about Silv alleging the same basic fact pattern: a suspicious telephone call; the appearance of long distance charges to which the individual/business did not agree; the playing of an altered recording purporting to give "consent" by the individual/business; additional charges to the individual/business; and Silv's subsequent refusal to refund any money.

58. Upon information and belief, Defendant knowingly, purposefully, and willfully maintains policies and practices which flagrantly disregard FCC regulations by failing to comply or by fraudulently simulating compliance with the verification requirements set forth in 47 CFR § 64.1120, *et seq.*

59. Silv does not provide a commercially valuable service, and no reasonable customer would agree to authorize Silv to serve as their long distance telephone provider. In fact, most business line telephone contracts include unlimited long distance, making use of Silv a significant and unnecessary expense.

60. Silv has made a nationwide practice of unlawful slamming. The internet contains a plethora of customer complaints describing substantially similar slamming experiences with Silv.

61. Silv has an "F" rating by the Better Business Bureau ("BBB").

62. A review of the BBB website[1] revels the following complaints, which have striking similarity to Plaintiff's complaint:

a. A report to the Better Business Bureau on May 27, 2016 alleged that Silv placed unauthorized long distance charges on the phone bill of a company totaling $1,047.25. According to the complaint, Silv falsely claimed it had authorization and "played a recording that was fake. All yes answers were the same, they were spliced into the recording." According to the complaint, Silv had called the complaining business and claimed to be calling to see if the company wanted to be listed in a directory. The employee of the complaining business who spoke with Silv when it called "listened to the recording and verified that it was fraudulent."

b. A report to the Better Business Bureau on April 17, 2015 alleged that "Shortly after activating our phone service we received an odd call from someone claiming to represent AT&T, the asked a variety of seemingly innocuous questions, name, date of birth and then a few yes or no questions. We have recently noticed on our ATT bill that we are being charged twice for long distance, once from ATT & again from Silv Communications. The person responsible for paying the bills does not work in the store and would have no way of knowing that this was a fraudulent charge. When I spoke to someone today at Silva they replayed a recording that was obviously a fake...there were a variety of questions authorizing service being switched but if you listen closely all of the 'yes' answers are the same...there is no variation in tone.. it's the same 'yes' over and over again....ATT charges us $10 a month for long distance, Silva charged $40...I only wish we had caught this sooner...I imagine we aren't the only ones and if enough people come forward maybe there is something that can be done."

c. A report to the Better Business Bureau on April 7, 2015 alleged that "Silv Communicationc/USBI has set up unauthorized charges with my phone/internet carrier and continues to charge me after we have asked them to stop. My company was contacted by Silv Communication stating that they we Centurylink and that they could save us $35.00 a month on long distance. Ok, sounds great. Not so much they started charging $44.17 a month for service that was included in a great price already and invalidated the contract that I had already with Centurylink. Currently they have refunded the two months that they have charged but charged again for another month. We a new business and our time is very valuable to us. We have now spent more than 3 hours fixing a problem that should have never existed from them."

d. A report to the Better Business Bureau on March 6, 2015 alleged that "My firm recently switched to Verizon for phone and internet services. On 11/05/2014 I received a cold call from someone who portrayed themselves as a Verizon

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1 http://www.bbb.org/losangelessiliconvalley/business-reviews/telephone-companies/silv-communication-in-los-angeles-ca-100024374 (Last viewed August 11, 2016)

representative and referenced our recent change in service. The cold caller spoke very fast and had a thick foreign accent. After coaching me on what to say he recorded/verified that I agreed to the change. I contacted SILV Communications on 3/02/2015 and asked them to reverse charges but Kelly at SILV Communications said that she would not reverse past charges I had mistakenly authorized. She only agreed to end charges going forward. What kind of company would want their sales force to cold call like that! I have filed a complaint with the FTC and have contacted Verizon and my bank to make them aware of the situation. This is not the first complaint on SILV Communications (just google them) but I do hope it is the last!"

e. A report to the Better Business Bureau on October 10, 2013 alleged that "This company attached our phone service with its own long distance service, which is already included in our AT&T service package. They have been billing our account since April 2012 for $43.81 each month. This is 18 months of unauthorized charges. They have repeatedly been told to cease this unauthorized service by my wife, ***** *****, and have agreed to comply but the charges never stop. They claim that a person named ******-**** authorized the service. (We have never employed an individual by that name at this or any other location) They played the "authorization" to me. The voice asking the rapid-fire questions was very heavily accented and impossible to understand throughout most of the call. Further as the "employee" was mumbling the answers, it could have been any one, possibly even a man. I certainly did not recognize the voice as an employee, current or past. What type of contract can be made verbally that cannot be broken by the same method verbally? Additionally, I would assert that a last name would be required by law or UCC codes to initiate a contract if it were indeed a legally binding contract. They said they were willing to offer a 2 month courtesy waiver of payment. What about from 2 months from the first notification in May of 2012? This company is a disgrace to the telecommunications industry. They know that they can get away with billing it right through the phone company, who appear to be complicit in this fraudulent enterprise.I understand "SLAMMING" to be illegal. It is time for a stop to this type of unsolicited abuse once and for all."

f. A report to the Better Business Bureau on October 26, 2015 alleged that "Mid April, 2015 we received a phone call from someone claiming to be from Century Link (our current phone company) saying we will be receiving a "coupon". They repetitively asked our name, title and eventually birthdate. Shortly after, we started getting billed for 3rd party long distance service in addition to the unlimited long distance service we are already receiving/paying for from Century Link. In speaking with the company directly they said we authorized their services on April 15, 2015 and gave the name of the employee that answered the "coupon call". We were getting charged for services we did not approve or receive."

g. A report to the Better Business Bureau on July 13, 2015 alleged that "An employee from Silv Communications fraudulently obtained authorization by saying they were just verifying information for AT&T. In September of 2013 a representative from SILV Communications called and asked an employee of my company to verify some information for AT&T in order to lower our long distance bill. They claimed to be calling from AT&T. I called to ask to listen to the recording of the verification and it was not my voice or my birthdate. They did not have a recording of the original conversation, just the verification. Their service changed what should have cost me $10 a month from AT&T to $42 a month for SILV. I would never had authorized this change of service if they would have been clear as to what the authorizations was for. I called and asked for a refund and to cancel this service I never wanted and they said no. The customer service representative I talked to at that point was Kelli (with an I) who would not give her last name but provided me with an employee number ***** She also provided me with a cancelation confirmation number of ********** and refused to replay the recording of the authorization for me to record."

h. A report to the Better Business Bureau on July 16, 2015 alleged that "Claimed to be AT&T requiring my information, then switched my long distance carrier without permission now have extensive switching fees. I received a business phone call on 3/28/14 from a gentleman claiming to be AT&T and needing to verify my information since we are a new business and just opened, he never informed me he was from another company and was switching our carrier. IT WAS NOT APPROVED."

i. A report to the Better Business Bureau on February 5, 2016 alleged that "A woman called me several weeks ago and asked me a series of yes or now [sic] questions. During the conversation, I asked her what this was all about and was told, "customers have been complaining about the cost of their phone services so we are providing a discount." "We" leaving me to believe it was my phone carrier. A couple of days later, I received my phone bill and when I entered online to type in the discount code I was given, there was no place to do so. I called my phone carrier and learned of this happening to others in having their long distance switched over w/out customer knowledge through a series of yes or no questions. Needless to say, my phone carrier switched back my long distance. Today, I received a bill from my phone carrier with a third party bill in the amount of $49.69. When I called the company, I received yet another confirmation code attached to a credit to my carrier account. When I asked who owns these "confirmation numbers" and how long it was going to take, I was told this SILV Communications owned the confirmation numbers, the credit would not hit my account for up to two full billing cycles, and not to pay my full phone bill. Getting angrier, I asked more questions and was told the employee should have never told me about any sort of discount, etc. I asked if I could file a complaint and she said I would have to write to corporate. At this point, I'm extremely upset because they could use the phone and call me to change my services w/out my knowledge but I could not in turn call a phone number to speak with a corporate representative (all reps for this phone number seemed to be "supervisors")."

j. A report to the Better Business Bureau on June 26, 2015 alleged that "USBI[2] called and said they were Verizon. they said they would get my phone bill lower. I was getting free long distance with Verizon. I received a call from someone saying they were from Verizon and they could save me money on my bill. I said that I got free long distance so I didn't have a problem. They said that my total phone bill would stay the same but I would pay less for phone service. I got my first bill and I was charged for each call. I talked to Verizon and they credited me with the calls but said I had to call USBI. I called them and they said they would cancel my service. I got my next bill with 6 charges on it after the cancellation date. I called USBI and they said that they can't do anything about it since it was Verizon's fault they didn't cancel when USBI canceled. I said I was not paying the bill and ***** (USBI drone) said there wasn't anything she could do about. She had an attitude and hung up on me. I called back and got the drone Laura again and I asked for her manager but she said there wasn't any. I told her again that I wasn't paying it. She said I could lodge a complaint with an address in Orange California. Gee, I live near there, I guess I will have to pay them a visit. These people are morons and have no problem taking people across."

k. A report to the Better Business Bureau on May 18, 2015 alleged that "On Oct. 6th, 2014, I looked at our Verizon bill to see $50.68 charged for third party charges. In detail this was Silv Communications through USBI which is the billing company. I called them and they did the "i have the authorization recording, would you like to hear it?" I of course did, and they had their rep ask an employee a question, and the response was a "yes" with a cut, then asked other questions where the same edited sound occurred with the exact same "yes" clip. When they asked what the position was with the company that authorized this, it was a muffled "accountant". There is no accountant on staff at our store, and the one we use off-site is female anyway. Also, an accountant would not have that authority. Furthermore, the recording kept going on silently for minutes until I hung up. The last question on the recording went unanswered. I'm sorry to say I don't remember the actual words of that last question. The recording and the charges are fraudulent and down right scummy. Unfortunately this recording was supposedly from Oct of '13. We had been sending our bills to our bookkeeper who apparently just paid bills and didn't look at them. Now that we have our manager doing the books, we discovered this ridiculous scam."

l. A report to the Better Business Bureau on January 26, 2015 alleged that "A foreigner contactes [sic] us in December stating he was with Century Link and could provide a 30% discount for all services. The conversation was recorded, but the questions asked in the recording are NOT what was stated on the phone. The recording states that they are from an outside company and they will be switching

2 On information and belief, USBI is an alternate identity / agent / billing agent of Defendant Silv.

long distance services. The ACTUAL conversation stated the gentleman was with Century Link and could provide a 30% discount with our Century Link service. The phone conversation was then ended on our end when we noticed something fishy about the whole thing and no final approval was ever give. The recording is again completely false... When I called the company a customer service supervisor picked up the phone and was nothing but rude. She refused to let me talk to a supervisor stating she was a supervisor and even refused to let me talk to another supervisor. When asked who her boss was so I could file a complaint she said she couldn't provide that. I called back a second tie [sic] and talked to yet another supervisor named Kelly who stated the exact same thing, that she couldn't provide anyone else to talk to and that if I had a complaint I needed to put it in writing and send it to the corporate office who's address they provided. This company is scamming people into an additional service and will not provide any means to talk to anyone."

m. A report to the Better Business Bureau on October 24, 2014 alleged that "After reviewing my business telephone records, I have been continuously charged for long distance calls when I was already receiving that service for free through Century Link. When I contacted Century Link regarding this dispute, I was told that a third party company was billing it. I was advised to call the third party company and close the account with them. Once I did that I asked them to provide proof to me that there was in fact an authorization approving the long distance charges, which they were unable to do saying it had been destroyed. I have absolutely no knowledge of this company nor would have approved them to bill me for a service I was already receiving for free. After reviewing the total charges by this company, which were billed monthly from September 2012 through September 2014 and total $689.40."

n. A report to the Better Business Bureau on July 11, 2014 alleged that "A sales rep contacted an employee at my business and told them they had spoken with the owner and the owner had agreed to switch long distance over to USBI. The charges appeared on our 4/25/14 telephone bill and the owner called USBI to cancel service. USBI had a totally different company name than ours, and no other information relating to our account except for our employee's name and date of birth. They stated that they would "pass *** information on to the credit department" but that the operator could not credit our account for unapproved charges, nor could she cancel our service. Transferring our company's service without the consent of a business owner is unethical and despicable. This company lied to get this account and then they refuse to recognize their wrongdoing or fix the situation."

o. A report to the Better Business Bureau on June 20, 2014 alleged that "Changed our company long distance service without permission. Caused us to be charged $250 Term. fee with AT&T. They called our company on 3/19, and asked to change our long distance service, we said no. They asked the receptionists name at the beginning of the call, and said that she authorized it. I know for sure that she did not change it. Also, she is not authorized to make changes on our account."

p. A report to the Better Business Bureau on April 28, 2014 alleged that "Silv Communications (USBI) represented themselves as Century Link… I received a call from someone that presented themselves from Century Link, asking to verify my information. He then said that many customers were leaving Century Link due to the high cost. They were wanting to keep customers, so they wanted me to switch to a plan that costs less. After listening to his speal [sic], I told him no. He kept trying to discuss the issue with me, so I told him "no" again and hung up. I received my Century Link bill this month. The amount charged was DOUBLE the normal amount... On the back page of my statement is listed USBI as the company that charged my Century Link account. Under Miscellaneous charges and credits, it states the following transaction was billed on behalf of SILV COMMUNICATIONS... THe [sic] USBI Long Distance Charges were $42.68... I called Century Link directly from the number on my statement. The rep said that my long distance had been cancelled with them. She asked me questions to see if I had authorized or given permission for the company to transfer our long distance service. She said that when a company does this without my permission, it is called getting slammed… The Century Link representative was not authorized to reinstate my long distance with Century Link, so she transferred me to another representative. That representative was unable to reinstate my service, because the plan we started with 9 years ago, is no longer an option. The closest plan is $10.00 more per month. I was then transferred to a third party to verify the service with Century Link. I then contacted USBI … I let [the representative] know that I was filing a complaint with the Better Business Bureau."

q. A report to the Better Business Bureau on March 31, 2014 alleged that "I received a bill from USBI but stated they were billing on behalf of Silv Communications for long distance service. I called Silv Communications and told them that we're seeking a refund for the unauthorized charges that was placed on our CenturyLink account. The charge were [sic] $191.18 for the February 27, 2014 bill invoice. The CSR (****) stated they do not issue credits when someone authorize any changes on an account."

63. Furthermore, a search on www.complaintboards.com[3] reveals similar user sourced content regarding Silv's pattern and practice of slamming:

a. On June 6, 2016, a commenter wrote "Same story as others, but I am so mad, I need to vent. Business phone rings, they represent themselves at ATT. Tell me they are going to lower my bill because of the competition in town. I ask them several times that they are indeed ATT. "Oh yes..trust me." I should have hung up right then! I consider myself smart, and can't believe I was scammed! They ask

3 http://www.complaintsboard.com/?search=silv (Last viewed August 11, 2016)

you a few normal simple questions that you reply "yes" too. They then record this, cut and paste your voice, and put in their own words later. When you get your ATT [sic] bill, you now have a min. $80.00+ charge from SILV communications on it, which you never wanted, or asked for!!! ATT was quite nice, and will give you the SILV Communications phone number. When you call the SILV number, be aware...they are extremely RUDE! They are mean, and full of lies. This is the biggest scam company I have ever seen. So they tell you you [sic] did order the service from them, and they call you in 3-5 days to "prove" it. This is when you hear somebody talking about SILV and asking you if you want the service etc. THEN you hear your own voice saying Yes, because they have copied and pasted your voice. I WAS FURIOUS! I even told ther lady I don't know how she sleeps at night working for this horrible company. She then acted as if she has never heard this "scamming" complaint before from anybody. Where I stand now is ATT charges the amount back to SILV/USBI company. So I am at least in good standing with ATT. The ATT guy did say they will probably take the charges to a collection agency. This is just so unfair, and I can't believe they can get away with this!!! We work to [sic] hard for our money hear to give it away to this fraud. I just hope others read this, and learn about this company. I don't want them to scam anybody else out of their money. They need ot [sic] be stopped. They actually do have some law suits out on them now."

b. On March 10, 2015, a commenter wrote "on 3/10/15, I received the only bill (I hope) with four monthly charges going back to November 2014. Called SILV Comm and they said there had to be an issue with the phone number entered into their system. I am a private person and the phone number is a residential number. Funny enough, the billing name on my phone bill does not match the name on the bill received from SILV COMM. Cust service also said that they do not directly charge the customers. SO WHY THE KECK [sic] DID I GET THE BILL FOR SERVICES I DID NOT REQUEST OR AUTHORIZE!!! Supposedly the account is now taken off their system and no charges are due. WE WILL SEE."

c. On August 15, 2014, a commenter wrote "SCAM TOTAL SCAM FIRST TOLD ME THEY WILL GIVE 35% DISCOUNT ON MONTHLY TELEPHONE BILLS, BUT DONT GIVEN ME ANY DISCOUNT APART OF THAT ACTIVATE THE LONG DISTANCE SERVICES. THEY CALL ME UP ON THE BEHALF OF AT&T.."

64. Similar to the Better Business Bureau and complaintboards.com, google.com[4] contains records of complaints detailing the same pattern and practice as described above:

4 https://www.google.com/search?safe=off&q=silv%20communications&lrd=0x80c2b8827d25aa91%3A0x50cfaba75431e74f%2C1%2C&rct=j (Last viewed August 11, 2016)

a. Dated "5 months ago," alleging "First, I was not even aware that this company existed until today when I reviewed my businesses telephone bill to discover $2,000 in charges! Upon reviewing the bill in detail I discovered that the charges were due to early cancellation of a package - as I had not changed anything with my phone service I called the provider. While on the phone with them I recalled a series of mysterious calls that we had received about a month ago from someone claiming to be my provider and asking for information about my account so that they could give me a 30% discount on my service. As this sounded fishy I refused to give any information - or so I thought. Apparently the Silv employee was recording me and used cuts of the conversation to get through the third party verification process. I'm appealing the charges and hopefully will be successful! I don't understand how a company that practices this can still be in business!"

b. Dated "6 months ago," alleging "SCAM! THEY CALL YOU CLAIMING TO BE YOUR PHONE COMPANY AND CHARGE YOU FOR SOMETHING YOU HAVE NEVER AUTHORIZED. THEY ARE ILLEGAL! THEY ARE HACKERS! ILLEGAL BELIEVE IT OR NOT, THERE ARE PEOPLE THERE THAT ARE SO STUPID THAT THEY TRY TO MAKE MONEY FROM YOU IN A DUMB WAY LIKE THAT. SHAMEFULL. DO NOT LET THEM SCAM YOU LIKE THIS."

c. Dated "a year ago," alleging "These people use a third party system to call random businesses and try to add long distance to your local account. I am the owner of my business account and they have a recording of someone UNAUTHORIZED saying it was ok for them to bill my account and they started billing 43.40 to my local telephone company. If you have been billed by them you have been SCAMMED. They refunded 347.17 dollars but still owe me 217.03- which I am talking to AT&T about getting refunded. All this time I was paying At&T monthly for long distance services. I explained that my husband and I are the only authorized people on this account- they said the 347.17 was all they were able to refund- and that they had cancelled my account- which I said was WRONG because they were never authorized to start an account in the first place. If anyone from this company gives a care about this situation and the illegal billing that took place feel free to contact me. I would love to receive my refund of the unauthorized billing."

d. Dated "a year ago," alleging "SCAM SCAM SCAM!! UNAUTHORIZED BILLING FOR UNAUTHORIZED LONG DISTANCE CHARGES!! Google needs a negative star system!"

65. Locally, the Ohio Attorney General has similarly received complaints about Silv that both pre-date the instant action and show a pattern and practice of slamming in Ohio.

a. Complaint No. 751390, dated April 16, 2012, alleging "Being billed on Cincinnati Bell phone bill as a long distance provider when we did not request a switch from

Cincinnati Bell as our long distance provider. Verizon charges for Dial One plus long distance also appeared on the bill. Phone number provided for SILV Communications does not work, so I can't contact them."

b. Complaint No. 627895, dated February 24, 2010, alleging "The supplier has deceptively slammed us from Quest for our long distance to be with them in April 2009. The supplier also charged us for cramming charges as well. The supplier performed slamming and cramming of charges/fees that was never authorized. The supplier billed our Ohio office $199.90 per month since April 2009 for the past 8 months. Our company has tried disputing this debt multiple times with them but they are refusing to remove these charges and provide a refund. The supplier contacted the Administrative Assistant therefore hard to understand with a heavy foreign accent. The man asks several questions that have nothing to do with there [sic] service until they can acquire a "YES" therefore claiming our office agreed to there [sic] service… Our company would like to be refunded $1599.20 due to the fact they slammed us from our long distance carrier Quest and cramming fees in which neither of these was authorized."

V. CLASS ACTION ALLEGATIONS

66. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) on behalf of itself and as representative of the following class (the "Class") of similarly situated businesses and individuals:

> All individuals and businesses switched to and billed by Silv for long distance telephone service, anywhere in the United States, dating back as far as possible from April 4, 2016, for the applicable statute of limitations.[5]

67. Plaintiff also brings this action on behalf of the following State Sub Class of similarly situated business and individuals (the Ohio Sub Class):

> All individuals and businesses switched to and billed by Silv for long distance telephone service, anywhere in Ohio, dating back as far as possible from April 4, 2016 as permitted by the applicable statute of limitations.[6]

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5 Plaintiff reserves the right to refine and/or amend this definition.
6 Plaintiff reserves the right to refine and/or amend this definition.

68. Excluded from the Class and Ohio Sub Class are Defendant, its employees, any entities in which Defendant has a controlling interest, and Defendant's legal representatives, heirs, successors, and assigns.

69. The names and addresses of the members of the Class and Ohio Sub Class should be available from Defendant's records. Further, notice can be provided to the members of the Class and Ohio Sub Class by using techniques customarily used in class actions including individual mailed notice and notice by publication, as appropriate.

70. Although the precise number of Class members is unknown to Plaintiff, the number is, upon information and belief, sufficiently large to make joinder impractical. Plaintiff's conservative estimate places the size of the class of at least five thousand (5,000) members, representing, on average, one hundred (100) members per state. Plaintiff estimates the Ohio Sub Class contains approximately one hundred (100) members. The disposition of each Class and Ohio Sub Class member's claims through the class action procedure will benefit the parties, the Court, and society as a whole.

71. Plaintiff has no conflicts of interest and has retained counsel who is competent and has experience in class actions, including consumer protection class actions.

72. Plaintiff's claims are typical of the Class member's claims. Plaintiff is a member of the Ohio Sub Class. Plaintiff, the Class members and the Ohio Sub Class members have been subjected to the same policies and practices of Defendant, and have had their long distance providers changed without their consent as required by applicable law.

73. The Ohio Sub Class members have, additionally, been subject to common law fraud and victims of Telecommunications Fraud.

74. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting individual members of the Class.

75. The common questions include, but are not limited to, the following:

a. Whether Silv violated the verification requirements of the Communications Act by unilaterally switching business and personal consumers' long distance telephone service carrier to Silv without consent;

b. Whether Silv accurately described the scope of services it would provide to prospective customers;

c. Whether Silv appropriately trained its staff to operate in compliance with all applicable state and federal regulations;

d. Whether Silv accurately represented the charges associated with utilization of its services;

e. Whether Silv operated a scheme to manipulate audio recordings of telephone conversations;

f. Whether Silv routinely refuses to promptly cancel service after being instructed by a customer to do so;

g. Whether Silv collected charges from customers whose long distance telephone services were unlawfully switched without consent; and

h. Whether Silv provides any actual service of value to any customer; and

i. Whether Silv was unjustly enriched.

76. Additionally, common questions related to the Ohio Sub Class include, but are not limited to, the following:

a. Whether Silv perpetuated a scheme including Common Law Fraud against members of the Ohio Sub Class;

b. Whether the Ohio Sub Class were victims of Telecommunications Fraud perpetrated by Silv.

77. As noted above, Defendant has acted on grounds that apply generally to the Class and Ohio Sub Class, so that final injunctive and/or declaratory relief is appropriate respecting the Class and Ohio Sub Class as a whole.

78. A class action is appropriate because the common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class and the Ohio Sub Class.

79. A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted in this action, as the financial interest of each individual Class and Ohio Sub Class member is relatively small, making it economically impracticable to pursue remedies other than by class action. As such, the Class and Ohio Sub Class members have little interest in individually controlling the prosecution of separate actions.

80. If individual actions were to be brought by the members of the Class and/or Ohio Sub Class, the resulting duplication of lawsuits would cause undue hardship, inefficiencies, and expense to the Court and the litigants, and the nature of the claims is such that it is unlikely that many such claims would be pursued other than on a class basis.

81. Given the above considerations, it is desirable to concentrate the litigation of the claims in this particular forum.

82. Absent a class action, Defendant would likely retain the benefits of its wrongdoing, resulting in a miscarriage of justice.

VI. STATEMENT OF CLAIMS

COUNT ONE

VIOLATIONS OF THE WIRE OR RADIO COMMUNICATIONS ACT (47 U.S.C. § 258(a))

83. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully restated herein.

84. 47 U.S.C. § 258(a) states, in pertinent part, "no telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange

service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."

85. Defendant is a "telecommunications carrier" for purposes of 47 U.S.C. § 258(a), as that term is defined in 47 U.S.C. § 153.

86. The FCC has promulgated a comprehensive set of regulations establishing procedures that must be followed to properly switch a consumer's long distance telephone service providers. *See generally* 47 CFR § 64.1100, *et seq.*

87. 47 CFR § 64.1120(c) prohibits telecommunications carriers from submitting a preferred carrier change order unless the order is confirmed by a (1) written or electrically signed authorization form, (2) recorded oral authorization, or (3) verification by an independent third party.

88. Defendant submitted orders to change the long distance service provider of Plaintiff and other members of the Class without obtaining the required authorization and without obtaining verification of authorization, in violation of 47 C.F.R. § 64.1120, *et seq.*

89. As a direct and proximate result of Defendant's submission of long distance telephone service provider changes on behalf of Plaintiff and members of the Class without obtaining authorization from Plaintiff and members of the Class, Plaintiff and members of the Class have suffered injuries and damages, including but not limited to payment of fees for unwanted and unnecessary long distance service.

90. 47 U.S.C. § 258(b) in relevant part states, "Any telecommunications carrier that violates the verification procedures described in subsection (a) of this section and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable … in an amount equal to all charges paid by such subscriber after such violation….

91. Courts interpret 47 U.S.C. § 258(b) to provide a private right of action for victims of slammers. *See Valdes v. Qwest Comm. Int'l Inc.*, 147 F.Supp.2d 116 (D. Conn. 2001); *Community Voice Line, LLC v. Great Lakes Comm. Corp.*, 18 F.Supp.3d 966 (N.D. Iowa 2014).

92. The remedies provided by 47 U.S.C. § 258 are in addition to any other remedies available by law.

93. Defendant is a "common carrier" as that term is defined in 47 U.S.C. § 15347 U.S.C. § 206 ("Carriers' liability for damages") provides:

> In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

94. 47 U.S.C. § 207 provides, in pertinent part:

> Any person claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of damages for which such common carrier may be liable under the provisions of this Act, in any district court in the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

95. Defendant is liable for the damages incurred by Plaintiff and Members of the Class due to Defendant's "slamming."

COUNT TWO

OHIO COMMON LAW FRAUD (Ohio Sub Class)

96. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully restated herein.

97. Under Ohio law, to sustain an action for fraud, Plaintiff must show a representation, material to the transaction at hand, made falsely with knowledge of its falsity, with the intent to mislead another, with justifiable reliance upon the representation, resulting in injury.

98. In the instant case, Silv committed at least three separate and distinct acts of fraud upon Plaintiff.

99. First, in or about Summer 2014, Silv knowingly misrepresented the nature of its business and the nature of its inquiry as being related to an unspecified "directory." The true purpose of the call was to collect information about Plaintiff's identity and to record Plaintiff's affirmative responses in order to use that information to fraudulently switch Plaintiff's long distance telephone services. Defendant made its misrepresentation with intent to mislead Plaintiff.

100. Defendant's misrepresentation was material to the transaction at hand and Plaintiff's decision to provide Defendant with information and her verbal responses.

101. Plaintiff reasonably relied on Silv's misrepresentation that the information it sought was for an unspecified directory and would not have provided it if Silv had informed Plaintiff of its intention to switch Plaintiff's long distance telephone service.

102. Using Plaintiff's information and verbal responses, Silv unlawfully changed Plaintiff's long distance telephone service, causing Plaintiff to be damaged by paying for services it did not order or want.

103. Second, Silv again committed fraud against Plaintiff when, in November 2014, Plaintiff called Silv to request that Silv discontinue any long distance services and cease charging Plaintiff for services it neither needed nor consented to.

104. Silv knowingly and falsely represented that it would cancel Plaintiff's service, with the intent to mislead Plaintiff into believing service would be cancelled. Defendant's representation was material to the transaction, and Plaintiff relied upon that representation by taking no further immediate action to switch telephone services.

105. Plaintiff suffered damages by paying the bill for services she neither needed nor wanted.

106. Third, Silv again defrauded Plaintiff in February 2015 when Plaintiff again called Silv to have the service removed from its telephone line.

107. During that call, Silv played for Plaintiff a fabricated audio recording purporting to prove that Plaintiff had consented to the switch to Silv. Silv also committed fraud when it assured Plaintiff that it would cancel her service and entered a note on Plaintiff's file in Silv's system to discontinue billing Plaintiff.

108. However, Silv continued to bill Plaintiff.

109. Both the fabricated recording and account order were material, knowingly false, and intended to mislead Plaintiff.

110. Plaintiff justifiably relied on the misrepresentation that service would be cancelled and was damaged when Plaintiff was charged for and paid for services through March 2015.

COUNT THREE

UNJUST ENRICHMENT

111. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully restated herein.

112. Defendant has been unjustly enriched by its receipt of benefits, in this case money, that Defendant is not justly and equitably entitled to retain.

113. Plaintiff conferred a benefit upon Defendant, to wit, the payment of the charges on its bill.

114. Defendant had knowledge of the benefit when it received payment for telephone services Plaintiff neither needed nor requested.

115. Defendant retained the benefit despite knowing it was unjust to do so as: a) Defendant "slammed" Plaintiff; b) Plaintiff never consented to Silv providing long distance telephone services; c) Plaintiff repeatedly requested that Silv stop charging Plaintiff for long distance services and; d) Defendant falsely assured Plaintiff it would stop charging Plaintiff but, in fact, continued to charge Plaintiff for months after promising it would stop.

116. At no point did Defendant refund any monies to Plaintiff, and Defendant has been unjustly enriched by its conduct.

COUNT FOUR

OHIO TELECOMMUNICATIONS FRAUD (Ohio Sub Class)

117. An individual may initiate a civil cause of action for a criminal act as specifically authorized under Ohio Revised Code § 2307.60.

118. Silv has violated Ohio Revised Code § 2913.05, Telecommunications Fraud.

119. As alleged above, Silv has devised a scheme to defraud Plaintiff by tricking Plaintiff into answering innocuous questions used to create a doctored recording, allegedly authorizing consent to switch Plaintiff's long distance service to Silv.

120. In furtherance of that scheme, Silv transmitted, by means of telecommunications device (a telephone), a sound (the false recording) to further the scheme to defraud Plaintiff and others.

121. Silv did so with the necessary level of intent.

122. Plaintiff suffered damages as a result of Defendant's conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all other similarly situated Class and Ohio Sub Class members request judgment against the Defendant as follows:

1. For an Order certifying this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing counsel for Plaintiff as Class Counsel;

2. Declaratory judgment that Defendant's conduct violated 47 U.S.C. § 258a. *et seq*., and injunctive relief as to Defendant's practice of "slamming";

3. For an award of actual and statutory damages to Plaintiff, the Class and Ohio Sub Class, against Defendant pursuant to 47 U.S.C. § 207 and 47 CFR § 64.1140;

4. For an award of all relief available under 18 U.S.C. §§ 1964(a) and (c);

5. For an entry of judgement against Defendant and for Plaintiff on Plaintiff's state law claims;

6. For an award of compensatory and punitive damages;

7. For an award of reasonable attorney's fees and costs; and

8. Such other relief as in law and equity is appropriate under the premises.

Respectfully submitted,

MINNILLO & JENKINS Co., LPA

/s/ Christian A. Jenkins

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Counsel for Plaintiffs

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable in this matter.

/s/ Christian A. Jenkins
Christian A. Jenkins (Ohio Bar No. 0070674)

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2016 a copy of the foregoing First Amended Class Action Complaint was served electronically through the court's ECF system to the following:

Robert A. Steinberg
Robert A. Steinberg Co., LPA
9050 Ambercreek Drive
Cincinnati, Ohio 45236

and

Terrence L. Goodman
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Cincinnati, Ohio 45241

Counsel for Defendant Silv

/s/ Christian A. Jenkins
CHRISTIAN A. JENKINS (Ohio Bar No. 0070674)